

Kimi Makwetu

(1966 – 2020)

Auditor-General of South Africa from 2013 to 2020

We mourn the death of a committed public servant who served South Africa with unfailing integrity and did all he could to rescue this country from corruption and the abuse of public funds.

Parliament and the Auditor General:

By Martin Nicol, Bruce Kadalie and Moira Levy

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IFAA's Checks and Balances Project is fast reaching a conclusion that irregular expenditure is due to the lack of consequences for those responsible for the devastating ongoing financial mismanagement in government departments and entities. This progress report, arising out of recent one-to-one interviews and a public forum, lists proposed changes Parliament will have to undertake to address the weak follow-up of the publicly reported audits from the Auditor-General.

Introduction

Parliament is responsible for ensuring that public funds are spent wisely in the public interest and are not looted. Parliament cannot do this work itself – it relies on the expert, independent services of the Auditor-General of South Africa (AGSA), who is appointed by Parliament (according to the Constitution) to undertake government auditing.

Parliament, over many years now, has failed to ensure that there are effective follow-up mechanisms to implement the recommendations of the Auditor-General (AG) on the management of public finances.¹

Parliament is complicit in the failure of government to implement the recommendations of the AG.² In practice, Parliament lacks the ability or the willingness to hold the executive accountable.

The Institute for African Alternatives (IFAA) began a project in October 2019 to consult widely and propose a way forward – primarily for Parliament, which is responsible for scrutinising executive action and for holding the executive accountable.

The problems revealed by government auditing – and the lack of follow-up on reports and recommendations of the AG – have been widely reported. There is no need to repeat the details here. It will suffice to recall that audit outcomes across most of government are disappointing, even alarming. Mismanagement of public funds is not being addressed to the extent and at the speed necessary. The trend remains one of regression. This is public knowledge widely covered in the press, discussed at length in Parliament, and archived by the online records maintained by the Parliamentary Monitoring Group (PMG).³

AG and Parliament agree there is an accountability problem

The late Kimi Makwetu, the AG at the time of writing, told the Standing Committee on Public Accounts (SCOPA) on 23 October 2019 that there were several root causes for the lack of improvement in government audit outcomes:⁴

- There was a lack of urgency in responding to AGSA messages about addressing risks and improving internal controls. At fault were accounting officers and senior management - political leaders and oversight bodies such as public accounts and portfolio committees.
- There were inadequate consequences for officials who deliberately or negligently ignored their duties. If they were not held accountable, such behaviour could be seen as acceptable and tolerated.

Alf Lees (Democratic Alliance) said irregular spending was on the increase. If there was condonation it took a very long time. Meanwhile, there appeared to be no consequences for failing to deal with old irregular expenditure issues.

Makwetu had said at the time that irregular expenditure was growing because of a lack of consequences for those responsible. The expenditure would be flagged by AGSA, there would be engagement with SCOPA, a report would be tabled, resolutions would be adopted - and the next year there would be even greater irregular expenditure.

“How loud can these voices be? Can they be even louder?” he asked.⁵

The previous issue of *New Agenda* included an article that outlined the importance of a government auditor being independent of the government and insulated from political interference by the legislature. That had been achieved by South Africa’s AG, which is, perhaps, the most successful of the institutions created by Chapter 9 of the Constitution to enhance democracy.

The problem lies in Parliament’s weak follow-up on the issues raised repeatedly by the AG. Parliament is aware of this and is concerned. *Business Day* reported on 25 June 2020: “MPs across the board raised concern about the financial state of the municipalities, saying the lack of consequences was largely to blame.”⁶

On 24 June 2020, the chairperson of the National Council of Provinces’ (NCOP’s) Select Committee on Cooperative Governance and Traditional Affairs,⁷ China Dodovu, “called for clear consequence management⁸ in errant municipalities with a negative audit outcome for the 2018/19 financial year.”

The chairperson raised this opinion following the local government audit outcomes briefing by the office of the AG to the NCOP. A parliamentary statement said, “Mr Dodovu

highlighted that without concomitant action, the audit outcomes will not improve in the near future, something that has a direct negative impact on the ability of the municipalities to deliver quality services to the people.

“There is a serious problem here. Are we going to sit with the Auditor-General again next year and raise the very same problems if there is no concomitant action taken against anybody who is responsible for the financial mess in the municipalities? Last year, the same problems were raised, and amongst them is the deteriorating accountability and lack of consequence management, a point that is highlighted today. If we don’t put a stop to this, next year we are going to face the same problems,” Mr Dodovu said in a press statement.

Parliament spends a huge amount of time scrutinising the finances and performance of departments and entities. For this it relies heavily on the reports of the AG. Parliament publishes lengthy committee reports detailing MPs’ observations, findings and recommendations. Committee chairpersons regularly issue media releases like the one above.

Efforts of members and the AG to promote accountability

Who can say Members of Parliament do not try to hold the Executive to account? They do try. The Parliamentary Monitoring Group (PMG) records angry and condemnatory statements from MPs from all parties when they consider reports from the AG on unauthorised, irregular, and fruitless and wasteful expenditure.

South Africa spends a *lot* of time, money and professional effort on “government auditing”. The research, reading and interviews of the Checks and Balances Project to date have revealed a picture of an AG’s office that is truly world class. The AG no longer simply audits and delivers reports. Auditing and reporting are supplemented by pre-audit advice, communication and education directed both at auditees and at citizens and public representatives. The AG pays special attention to the “root causes” – identifying what is weak in the internal controls of departments, municipalities and entities - so that plans can be made to improve administration and meet the standards set by Parliament and by government regulations for the honest and effective management of public funds.

A senior executive at the AG told the project: “The accounting officer is the first line of defence to ensure the proper management of public funds. He is responsible for implementing key controls. If you fix the controls, that will produce the outcome you want.” Under Kimi Makwetu, AGSA extended the “offerings” of the AG. It reacts *during* the year before considering any audit submissions – as soon as it notices issues of concern.⁹ A recent example was seen in September 2020, when the AG released six “Preventative Control Guides”.



The cover of the report illustrated the AG’s message - that there was a need for a hand to stop the falling “dominoes,” and prevent public money from being stolen or misused. The Guides responded to a wide range of problems which were enumerated in the AG’s “First Special Report on the financial management of government’s Covid-19 initiatives”. This report was presented to Parliament by Makwetu on 4 September 2020.

The more effort given to auditing, the more money is misused

It is extremely ironic that at a time when the AG has enhanced its offerings and moved into pro-active intervention, South Africa has experienced looting and mismanagement of public funds on a scale so large that the country is going to have to curtail state support for poor and vulnerable citizens.

As Makwetu noted: “In the most recent times, South Africans have been numbed by the staggering numbers of wasteful, fruitless, unauthorised and irregular expenditure. This is the type of expenditure that should not be tolerated by citizens whatever technical justifications are attached to their occurrence. The very existence of such expenditure suggests that those that persistently incur it, are not bothered for as long as there is no accountability or consequences.”¹⁰

The situation has been made still worse by the impact of COVID-19, with the danger looming of a complete economic melt-down.¹¹ An ANC MP, the Chairperson of the Standing Committee on Appropriations, asked on 17 June 2020 whether it is possible that the challenge posed by COVID-19 is being used by departments and entities as a “get out of jail free” card when it comes to underperformance.¹² COVID-19 has required the urgent expenditure of additional government funds on a scale and at a rate that is unprecedented,

and which has provided wide opportunities for theft, fraud and corruption.¹³ There has been no shortage of criminal efforts to steal these funds, abetted by business people, public servants and politicians with political influence.¹⁴

The citizens' representatives sit in Parliament and are explicitly charged with oversight on public expenditure. But accountability in this regard eludes Parliament.

What can be done about the 'accountability gap'?

The Checks and Balances Project has focused on the role of Parliament in making use of reports and briefings from the AG to hold the Executive to account. The research has been guided both by one-on-one interviews and on consultation with a few stakeholders. Some follow-up research suggested by these interactions is still in progress. But one thrust of the proposals from the research will be to urge Parliament to amend some of its internal rules, as well as some laws and timelines to allow more effective oversight by MPs.

These are some changes suggested by the research so far:

- Develop a better oversight model for committees — provide a framework for committees so they are able to do their oversight work in a planned way and are held accountable for doing it properly.
 - Committees must have proper systems for following up on their questions and resolutions.¹⁵
 - Parliament must stop relying on the bureaucrats who run Parliament to set the agenda for committees and their oversight activities.¹⁶
 - Committees should use their existing powers to experiment with different ways of holding meetings and interrogating the executive, for example colloquiums/interrogation as in the US Congress.
 - The so-called Oversight and Accountability (OVAC) model, which is said to be in place in Parliament following the 2016 revision of the rules, has no real effectivity in addressing the problems and gaps in accountability. The OVAC “model” contains many unresolved issues.
- Review existing laws that set unrealistic time limits and time-consuming procedures, thus hampering the effectiveness of Parliament.
 - The Money Bills Act and the Public Finance Management Act (PFMA) need to be reviewed to ease time constraints.
 - Parliament should deal with the scheduling of portfolio committee activities so that energy on oversight is planned strategically and spent effectively. This can take place *throughout* the year – not in one burst when the Budgetary Review and Recommendation Reports (BRRRs) have to be tabled.
- Adjust orientation training for all Members when they come to Parliament so they better understand their roles and the role of the AG, the executive and the accounting officer/authority for each department or entity. This training is efficiently managed at present, but it concentrates on practical issues. Member training does not deal adequately with the ethical standards that parliamentarians should espouse and emulate. Members also need to have research assistance so they can prepare for meetings.

- The *sub judice* rule is used (incorrectly) to limit Parliamentary oversight. The rule is unnecessary and allows departments to browbeat Members. It should be removed.

Additional consultation by the Checks and Balances Project discussions also generated the following points:

- The research team should check where its draft proposals have already been covered in existing resource materials and in previous reports to Parliament (such as the 1999 Corder Report which proposed an accountability standards law). Existing legislation, particularly the Money Bills Act, contains powers Parliament has never used for holding the executive to account.
- Examples of international experience on how other Parliaments have confronted non-compliance by the executive with Parliamentary instructions should be included. What sanctions have been applied by legislatures elsewhere?
- Refer to the question raised by Judge Zondo: where was Parliament when state capture was happening? Why did the National Assembly fail to exercise effective oversight in respect of state capture?
- Consider ways in which non-compliance with the AG recommendations by municipalities could be brought before Parliament. The inter-governmental co-operation framework legislation provides no avenue to enforce co-operative governance. Checks and balances here simply do not work.
- Induction is important for new members but it must be promoted alongside continuity – parties need to return a good proportion of members to the next parliament to ensure that lessons are learned from experience and that Parliament preserves institutional memory amongst members. Parties need to act responsibly so that committees preserve some level of membership across Parliaments. Parties also need to allocate Members to committees where their experience can be used.¹⁷ Members should not only rely on AG reports – they must be on the ground in their constituencies. Parliament must not hamper members by tying them to parliamentary meetings in Cape Town that in practice limits oversight efforts.

The Checks and Balances research team will prepare recommendations for Parliament and for Members, as well as avenues for citizen and stakeholder participation, to promote better understanding and implementation of the recommendations of the AG. The draft results were discussed at an IFAA Validation Workshop before a final report/action plan is completed in December 2020.

The basic issue: political will

No changes in laws and rules can however address the basic issue raised by our research – the need for *political will*. When asked why the recommendations of the AG are so often not followed, several interviewees almost brushed the question aside as superfluous:

“... there is only one to blame – the ANC. You will never get recommendations followed because this is seen as a bad reflection on the ruling party. In South Africa, we elect parties, not individuals. The ANC lacks the political will to make decisions [to implement AG recommendations]. If people are driven by greed and self-interest, that is what will happen.”¹⁸

True as this may be, the IFAA research team was initially very much influenced by the emphatic statements by MPs – including from the ANC – that they are outraged by the failure of the Executive to act against a range of anti-social behaviours – from the theft of money and corruption in contracts to the failure of mining companies to implement social and labour plan commitments.

This bias – it must be termed – influenced the initial set of proposals outlined above. How could parliamentarians get help to succeed with the work they really want to do? How could they work around parliamentary gate-keepers and limited resources to be more effective in holding the executive to account?

MPs expressed strong frustration when departments return to meetings again and again with issues unresolved until, each five years, the clock is set back to zero when MPs are cycled out and government re-jigs portfolios.

The Checks and Balance team’s sympathy with MPs has worn thinner as we have done more interviews and as we have absorbed the complicity of the ANC, as well as our legislatures across the country, in the mis-use of emergency COVID-19 funding. There are excellent reports in the records of Parliament on how to improve its influence and effectiveness. These were commissioned by one Parliament and then often ignored by the next one. The Constitutional Court has elaborated upon the great authority granted to members of Parliament in the Constitution. But it is up to the Members themselves to agree on how best to use their authority. In practice, however, many members take their democratic and constitutional duties lightly. Embroiled in constituency distractions, they neglect the work for which they were elected to Parliament.

The expanded powers of the AG are not there to do Parliament’s job

The “expanded mandate” granted to the AG by Parliament (effective from 1 April 2019)¹⁹ was not intended to take oversight responsibility away from Parliament.²⁰ The new powers allow the AG to intervene administratively to encourage, and then compel, accounting officers to address material irregularities revealed by the auditing process. But Parliament has the prior responsibility to scrutinise executive action and to hold the executive to account. The new powers of the AG become relevant only when Parliament and the Executive fail to perform their functions.

The new powers of the AG are the ultimate backstop, not a substitute for Parliamentary action. (In our view, the new powers compromise the independence of the AG, because they treat the AG as an arm of the Executive, doing what the Executive should have done!²¹ A counter position was expressed during the consultation, that there is no necessary limitation of independence implied in the expanded mandate of the AG.)

This is not a side issue. The late AG told us in an interview on 7 July how very important he thinks the amended Public Audit Act is. The focus of the Checks and Balances Project is Parliament, and how MPs can be assisted to do their work better. Mawetu said that Parliament has to ask about whether accounting officers have taken appropriate action after

being informed of material irregularities. This is a different question from the past, where the focus was on the implementation of AG recommendations.

Things you may not know about the AG

- The AG is responsible for over 1,000 audits a year.
- AGSA has a very significant annual revenue itself – over R3,400,000,000 in 2018/19.
- AGSA is self-funding – from its audit fees – and recorded a surplus of R71 million in 2018/19.
- AGSA employs a huge permanent staff – 3,556 people at present – and it also subcontracts about 17 percent of its audits to private sector audit firms.
- Auditees are supposed to pay AGSA fees after 30 days – but AGSA has R744 million owed to it – mainly by municipalities, who owe R321 million.
- AGSA itself always receives a clean audit opinion. Its own auditors are the private audit firm, Crowe. They are selected by the Standing Committee on the Auditor-General for a non-renewable five year term.
- The AG receives a salary of R6.4 million a year – and AGSA pays the members of its governing body R3 028 per hour – 100 times the government’s minimum wage!
- An enormous effort is invested by South Africa in auditing government expenditure and performance.

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All AG reports on departments and their entities have to be tabled by the responsible ministry – all in all several thousand pages of AG reports are tabled annually in Parliament – these are usually included within departmental and entity annual reports.

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ENDNOTES

¹ See the summary of the 2007 Mexico Declaration on SAI Independence in AGSA (2104:93) Principle 7 is “The existence of effective follow-up mechanisms on SAI recommendations”. Also see the 1977 Lima Declaration: Section 11. “Enforcement of Supreme Audit Institution findings” in INTOSAI (1998). South Africa’s AG was represented at both congresses.

² Ben Turok - Notes from Checks and Balances project discussion, November 2019.

³ <https://pmg.org.za/committees/> The website has a superb search facility. Enter “Auditor General” and wonder at the over 10 000 links since 1998!

⁴ From PMG meeting report Public Accounts (SCOPA): Audit Outcome 2018/19: briefing by Auditor General, 23 October 2019. Available at < <https://pmg.org.za/committee-meeting/29139/> >

⁵ Ibid – quote from PMG report.

⁶ “Just 8% municipal audits were clean [in 2018/2019]” *Business Day* 25 Jun 2020.

⁷ That is Cooperative Governance and Traditional Affairs, Water and Sanitation and Human Settlements. See Parliament (2020).

⁸ The definition of consequence management: “Action against transgressors (consequence management)” – Auditor General South Africa - 26-Mar-2013 [Nicol (2020); <https://pmg.org.za/committee-meeting/15631/>]

⁹ AG Project Bulletin 11. 02 June 2020.

¹⁰ AGSA (2020g)

¹¹ Paton (2020), quoting Tito Mboweni: By the end of this fiscal year government borrowing “will almost entirely consume all of our annual domestic saving, leaving no scope for investment or borrowing by anyone else...[A shift to foreign currency borrowing] could lead to “doom and despair” on a scale of Germany in the 1920s, the Greek debt crisis of 2009 or that of Argentina in the 1980s. Also see Ann Bernstein on the immediate danger of an “irreversible economic decline”: <<https://www.businesslive.co.za/bd/opinion/2020-08-19-ann-bernstein-only-business-can-lead-sa-out-of-the-abyss/>>

¹² <https://pmg.org.za/committee-meeting/30474/>

¹³ The AG addressed SCoAG on this precise threat on 22 May 2020: <https://pmg.org.za/committee-meeting/30291/>. There will be special audit reports that will focus on how the funds allocated to the Covid-19 pandemic were spent.

¹⁴ See for instance: *The ANC goes into battle against graft – and a battle within itself* by Carien Du Plessis, *Daily Maverick* 23 August 2020.

¹⁵ Perhaps Committee staff should work for the Committees they support rather than for the administrative sections of Parliament. Cf interview with Mr Hlengwa, who could not get the research staff that SCOPA needed.

¹⁶ There are 400 MPs but over 1,800 parliamentary employees, managed by people who often have individual ambitions and who pursue personal interests and prejudices at the expense of the wishes of MPs. Hlengwa said that the Financial Management of Parliament Act is used by the Administration of Parliament to deny committees research staff, refuse oversight visits and delay urgent investigations.

¹⁷ Interview with Hlengwa [AG Bulletin 05], when an expert on local government is sent to basic education.

¹⁸ AG Project Bulletin 06, 29 March 2020.

¹⁹ See Makwetu (2020) for an excellent description of and motivation for additional powers for the AG.

²⁰ See AG Project Bulletin 11, 02 June 2020: “This is a preventative control, not a regulatory control. It is to ‘scare’ people into doing their job.”

²¹ This was explicitly acknowledged by the AG himself, who wrote: “The intervention of the Public Audit Act amendments seeks to achieve what is traditionally the role of those charged with oversight...” (Makwetu, 2020)